

EX PARTE OR LATE FILED

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Ex Parte Notice

April 30, 1998

Magalie Roman Salas, Esq.
Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

**RE: Iowa Communications/Network Eligibility for Universal Service Payment
CC Docket No. 96-45
AAD/USB File No. 98-37**

Dear Ms. Salas:

The Iowa Telecommunications Association (ITA) has been informed of certain Ex Parte communications on behalf of the Iowa Telecommunications and Technology Commission in its effort to have the state establish private Iowa Communications Network treated as a common carrier for eligibility for universal service support. Oral Ex Parte presentation filings were made on March 24, 1998 and April 9, 1998. The latter of those discusses certain common carrier authorities. The authorities have been and are discussed by other interested persons in other filings.

The ITA intends only to briefly comment on certain bullet points accompanying the letter of March 24, 1998. The ITA also refers the Commission to its comments submitted by letter of March 2, 1998 in this docket.

- *No agency or entity is required to use the ICN.*

Chapter 8D.1 of the Iowa Code states for a purpose of the ICN "that communications of state government be coordinated to affect maximum practical consolidation and joint use of

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communication services.” As a matter of state law under Chapter 8D it is correct that there is not a mandate that agencies use the ICN. However, as a matter of political reality, there is a requirement for the state agencies to use the ICN. As a matter of fact, nearly all, if not all, state agencies are connected to the ICN.

- ***In some cases, and especially in rural Iowa, ICN is the only source for advanced services today, so failure to grant ICN’s request will mean that the affected schools and libraries will be unable to obtain any support at all.***

In addition to U S WEST, GTE and Frontier, Iowa telecommunications customers are served by 155 independent telephone companies. Those companies serve predominantly rural Iowa. These companies provide up to date technology with the ability to provide such advance services as are required by their customers.

- ***Absent grant of ICN’s request, some schools and libraries will be eligible for support (i.e., those that get service via resold facilities) and some will not (i.e. those that get service via ICN’s own facilities), even though the service they receive is identical. Grant of the request will ensure equitable treatment for all schools and libraries in Iowa.***

The schools eligible for support are not dependent upon the source of the facilities used by the ICN. The Commission made clear that states providing their own private network and services would not be eligible for universal service funds. Those states however which merely resold the services of a telecommunications common carrier (where the carrier was the provider of service) would be eligible for discounts for the services provided by the carrier.

- ***Grant of ICN’s request will increase the number of options available to schools, libraries and rural health care institutions and therefore should reduce the overall costs of obtaining those services.***

The options available to these entities does not change. If approved, they can use the local common carrier or they can use the private ICN network. The decision of what service to use however is within the control of the ICN. Iowa Code § 8D.9(2)(a) provides:

A private or public agency which certifies to the commission pursuant to subsection 1 that the agency is a part of or intends to become a part of the network shall use the network for all video, data and voice requirements of the agency unless the private or public agency petitions the commission for a waiver.

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The affected entities have the option to either seek authority of the ICN to use the public common carrier with the educational discounts which will be afforded or use the private ICN network with whatever purported price advantages that network provides to the entity. All the ICN seeks to do here is to obtain for its private network the discounts which are made available for the customers of common carriers on the public network.

- ***Based on these facts, the Iowa Utilities Board, the certifying agency in Iowa, has concluded that ICN meets the criteria for being a telecommunications carrier.***

The ICN is not under the jurisdiction of the Iowa Utilities Board. That it is not a common carrier is evidenced by the fact that the Board has no authority over the ICN. Not only that, the Iowa Code provides expressly that the Iowa Utilities Board does not have jurisdiction over a recognized common carrier when it does business with the ICN. Iowa Code § 8D.13(18) states:

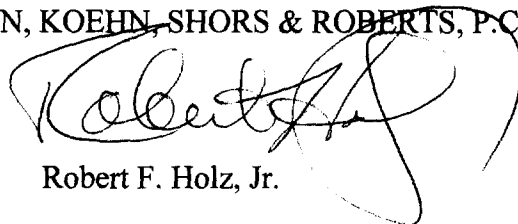
Notwithstanding Chapter 476, the provisions of Chapter 476 shall not apply to a public utility in furnishing a telecommunications service or facility to the commission for the Iowa Communications Network or to any authorized user of the Iowa Communications Network for such authorized users connection to the network.

Chapter 476 is the Iowa Public Utility Law. The Iowa Utilities Board has had no proceeding in which it concluded that the ICN meets the criteria as a carrier. It simply has no jurisdiction.

We trust this information will be useful in your consideration and ask that the request of the ICN be denied. In accordance with the Commission's rules, two copies of this ex parte notice are enclosed. Please include this ex parte communication in the public record of this proceeding.

Very truly yours,

DAVIS, BROWN, KOEHN, SHORS & ROBERTS, P.C.

A handwritten signature in dark ink, appearing to read "Robert F. Holz, Jr.", is written over the typed name. The signature is stylized with a large, sweeping loop at the end.

Robert F. Holz, Jr.

RFH/jb